

## REMARKS

This amendment is responsive to the Office Action mailed August 4, 2009. In the Office Action, Claims 17-22, 37-39, 41, and 42 were rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent Application Publication No. 2003/0014379 ("Saias"). Claims 1-16, 23-36, 40, and 43-48 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Saias in view of U.S. Patent Application Publication No. 2002/0004774 ("Defarlo"), and further in view of U.S. Patent No. 6,317,728 ("Kane").<sup>1</sup> Applicant respectfully traverses the claim rejections and requests reconsideration and allowance of the application.

Claims 1-48 are pending in the application. By this amendment, Claims 1, 17, 18, 23, 37, and 43 have been amended. Support for the amendments is found in the application as filed, for example in FIGURE 10 and at page 39, line 7, to page 42, line 24, among other places.

### Interview Summary

Prior to discussing the Office Action and the patentability of the claims, the undersigned counsel thanks Examiner Oyeibisi for the time and consideration he extended in a telephone interview conducted on November 3, 2009. The interview focused on the cited art (Saias, Defarlo, and Kane). The deficiencies of Saias were acknowledged and amendments were discussed to further distinguish the claims over Defarlo. Furthermore, the deficiencies of Kane were acknowledged and it was agreed that Kane would be withdrawn as a cited reference.

At the conclusion of the interview, it was agreed that applicant would formally submit the present amendment for additional consideration.

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<sup>1</sup> As a preliminary matter, applicant does not concede that Saias or Defarlo are prior art to the present application. While applicant submits that the claims pending in the present application are distinguishable over Saias and Defarlo (as well as Kane), applicant reserves the option to antedate the Saias and Defarlo references under 37 C.F.R. § 1.131. Furthermore, in instances where the Office Action refers to "Defario," applicant assumes the Examiner meant "Defarlo."

Saias, Defarlo, and Kane Do Not Support a *Prima Facie* Obviousness Rejection of Claims 1-16, 23-36, 40, and 43-48

Claim 1

Claim 1 recites a method of facilitating trading that includes "automatically determining from the captured data whether each of the two market participants has gained money or lost money from the trade in which they engaged," and "automatically updating a rating for each of the two market participants based on the determination of whether money was gained or lost from the trade, wherein the rating for each of the market participants is descriptive of the market participant as a trading party and is based on the outcome of trading between the two market participants." Applicant submits that the cited art fails to teach or suggest at least these elements of Claim 1.

The Office Action (page 5) acknowledged that Saias does not disclose all of the elements of Claim 1. The Office Action thereafter relied on Defarlo and Kane as overcoming the deficiency of disclosure in Saias. However, this reliance is misplaced as the disclosures of Defarlo and Kane do not make up for the deficiencies of Saias in disclosing or suggesting the elements of Claim 1. Accordingly, the rejection of Claim 1 should be withdrawn.

More specifically, the Office Action alleged that Defarlo discloses "automatically determining . . . whether each of the market participants has gained money (i.e., a win) or lost money (i.e., a loss) from the trade in which they engaged," citing paragraphs [0072]-[0800] of Defarlo. Applicant respectfully disagrees. At best, Defarlo describes a system that calculates certain trade statistics for a trader on *only one side* of a trade. This does not constitute automatically determining from the captured data whether **each of the market participants** has gained money or lost money from the trade in which they engaged.

In support of its position, the Office Action (page 10) referred to paragraphs [0079]-[0080] of Defarlo, where Defarlo explains:

[0079] The data analysis system 10 then calculates what the open positions of **the trader** were for the date being studied and recreates the fluctuations in **the trader's** profit & loss in user-defined intervals, i.e. 5

minutes. Certain data about **the trader's** performance 32 is captured during this simulation and recorded in a multidimensional database 34. This trader performance data includes maximum and minimum P&L (profit and loss), maximum and minimum P&L times, P&L at the opening of the market, actual P&L, capital utilization and shares traded.

[0080] After all analysis is finished, the data analysis system 10 takes the trade records and restructures the data into a standard multidimensional database 34. This allows correlations of profit & loss, win ratio and a number of other measures to be made against any of the factors listed above. As the system 10 builds a trade database 10 over time, a profile of trading behavior for each user will be created. Users, i.e. **individual traders or management of trading firms**, will be able to see what factors are typically present when traders win and what factors have led to losing trades. (Emphasis added.)

The Office Action thereafter asserted "that a data analysis system, as taught by Defarlo, performs the calculation of market participant's winning and losing positions (see paras 0079)." It is telling that in all instances of Defarlo's disclosure, as well as in the Office Action, that the trading positions are tracked only *for an individual trader*. Even in cases where the system may be used by multiple traders, it is each individual trader's trading positions that are tracked.

Defarlo tracks data on one side of a trade only. Defarlo does not track data on both sides of a trade. More specifically, Defarlo does not gather any data on which it can determine if contra-parties to the trades of the individual trader also gained or lost money on the respective trades. Accordingly, contrary to the assertion made in the Office Action, Defarlo does not disclose "automatically determining from the captured data whether each of the two market participants has gained money or lost money from the trade in which they engaged."

Attention should also be given to at least paragraph [0010] as well as paragraphs [0017] and [0018] of Defarlo, where Defarlo explains:

It is an object of the present invention to provide a data analysis system which imports technical and fundamental financial data and correlates that data to the trading history of **an individual trader**.

...

The above stated objects are met by a new and improved data analysis system to allow traders of equities and other financial instruments to keep track of **their** trading history and to display a trade profile of **their**

trading behavior. Trade results are analyzed by correlating trade transactions records with concurrent market conditions, categorizing the conditions, and appending condition data to the trade transaction record. The results are then displayed to **the trader** in the form of pivot tables and graphs.

The new and improved trader data analysis system acquires transaction data from **a trader's** brokerage or clearing firm and records the information about the state of a financial instrument, the industry group which the financial instrument is part of, and the exchange the financial instrument is traded on. The transaction data is turned into trade records including the open positions of **the trader**. For each trading record, the data analysis system references external data necessary for analysis calculations, i.e. technical and fundamental data. The system then calculates the value of a number of technical indicators, sorts the results into categories and associates the results to the trade record. Trade specific information is then calculated, sorted into categories and associated to trade records. Lastly, the system calculates certain performance data of the trader, for example, various profit and loss (P&L) positions. After the analysis is finished, the system of the subject invention takes the trade records and restructures the data into a standard multidimensional database. This allows correlations of profit and loss, win ratio and a number of other measures to be made against factors such as momentum, volatility, sentiment, etc. (Emphasis added.)

Again, it is evident that Defarlo's process, at best, calculates trade information for *an individual trader* on only one side of a trade. Even if one supposes, for the sake of argument, that two different parties who engaged in a trade separately execute Defarlo's process for their respective side of the trade, the result remains that Defarlo's process only computes statistics for the individual trader on the particular side of the trade. By any reading of Defarlo, it cannot be alleged that Defarlo discloses "automatically determining from the captured data whether each of the market participants has gained money or lost money from the trade in which they engaged," especially "wherein one of the market participants is engaged in the trade as a buyer and the other of the market participants is engaged in the trade as a seller," as recited in Claim 1.

The disclosure of Kane does not overcome this deficiency of Defarlo and the Office Action has already acknowledged the deficiency of Saias in this regard. Accordingly, for at least these reasons, Saias, Defarlo, and Kane do not provide a *prima facie* basis for rejecting Claim 1.

Applicant further submits that Kane (as well as Saias and Defarlo) fails to teach or suggest "automatically updating a rating for each of the two market participants based on the determination of whether money was gained or lost from the trade, wherein the rating for each of the market participants is descriptive of the market participant as a trading party and is based on the outcome of trading between the two market participants," as claimed in Claim 1. The Office Action (page 6) cited Kane for allegedly disclosing these elements of Claim 1. Applicant respectfully disagrees.

Kane discloses a computerized system with "agents" that provide trading *suggestions* to a *trader on one side of a trade* to help the trader make a *future decision* whether to enter into a trade. Depending on available information, the agents make a buy or sell suggestion to the trader based on the respective rules that they represent (see Col. 5, lines 5-15, of Kane). Suggestions from each individual agent to the trader are considered to be votes for a possible action that the trader may undertake (see Col. 5, lines 37-48, of Kane). Depending on the outcome of the votes from the various agents, the trader may decide to send an order to a marketplace (see Col. 5, lines 49-55, of Kane).

Applicant has previously argued and continues to argue that the plurality of agents disclosed by Kane do not constitute "market participants," in the context of Claim 1. The Office Action, however, considered this argument as "inaccurate." The Office Action (page 11) stated:

Kane discloses a trading system wherein decision agents are set up to make a buy or sell decision based on their respective rules (col. 5, lines 5-15, also see col. 15, lines 5-20), each agent in Kane is a market participant. Thus, when an agent makes a buy decision, that agent is a buyer in the market, and when an agent makes a sell decision that agent is a seller in the market regardless of which side of the market the agents are on.

Applicant respectfully submits that the above-stated position is not commensurate with the language of Claim 1. As recited in Claim 1, "market participants" are "each parties to the trade, . . . wherein one of the market participants is engaged in the trade as a buyer and the other

of the market participants is engaged in the trade as a seller." As further recited in Claim 1, "the trade results in an exchange of items between the market participants."

The plurality of agents taught by Kane do not engage in a trade at a market. The agents only provide buy or sell suggestions to a trader, or market participant, on one side of a trade. It is not accurate to state that when an individual agent makes a buy decision, that the agent is a buyer in the market. It is clear from the disclosure of Kane that any buy decision made by an agent is not submitted to a market, such that the agent becomes a party to a trade in which items are exchanged. Rather, when an agent makes a buy decision, that buy decision is provided for information only to a trader who independently determines whether to agree or disagree with the agent's buy decision. Even if the trader agrees with the buy decision or acts on a majority of the votes received from all the agents, the trader is the party that places the order in the market, not any one of the individual agents. A similar analysis applies when an individual agent of Kane makes a sell decision. That sell decision is provided for information only to the trader who independently determines whether to agree or disagree with the agent's sell decision. Additionally, as noted above, Kane's agents do not exchange items with any other agents as a result of a trade. It is simply incorrect for the Office Action to consider Kane's agents as constituting "market participants," in the manner set forth in Claim 1.

This deficiency of Kane is not overcome by the disclosures of Saias and Defarlo, as explicitly conceded in the Office Action (pages 5-6). For at least this additional reason, the obviousness rejection of Claim 1 should be withdrawn.

It should also be noted that Kane's system only keeps track of its own side (buy or sell) of a trade. Each trader only knows whether his or her own side has gained or lost money from the trade; there is no tracking of whether the contra-side of the trade gained or lost money from the trade. Accordingly, while not alleged in the Office Action, applicant confirms that Kane does not teach or suggest "automatically determining from the captured data whether each of the two market participants has gained money or lost money from the trade in which they engaged."

Applicant further submits that none of the cited art teaches or suggests "automatically updating a rating for each of the two market participants based on the determination of whether money was gained or lost from the trade," as claimed in Claim 1, "wherein the rating . . . is based on the outcome of trading between the market participants."

The Office Action (page 5) conceded that Saias "does not explicitly disclose . . . automatically updating . . . a preference rating for each of the market participant[s] based on the determination of whether money was gained or lost from the trade." While Saias purportedly discloses "an automated market" that "receives trading preferences" and these preferences are subject to an "optimization engine" within the automated market (see Office Action, page 12), the trading preferences computed in Saias are not descriptive of the market participant on the other side of the trade. Rather, at paragraph [0318], Saias explains that the preferences, or terms, include price, quantity, and other characteristics based on *what* is being traded. Moreover, preference information obtained from one market participant is not shared with any other market participant. Plainly put, the automated market described by Saias does not automatically update ratings for market participants, as claimed.

To the extent a trader using Kane's system, at the conclusion of the trade, updates "merit quotients" to rate his or her own agents (according to the agents' prior suggestions to the trader to buy or sell), these merit quotients are not "rating[s] for each of the two market participants," as recited in Claim 1. For at least this further additional reason, applicant respectfully submits that Claim 1 is patentable over Saias, Defarlo, and Kane, whether considered alone or in any combination.

In summary, where Saias, Defarlo, and Kane individually and collectively fail to teach or suggest all of the elements of Claim 1, there is no combination of the references that renders Claim 1 obvious. The rejection of Claim 1 should be withdrawn.

### Claims 2-16

Claims 2-16, which incorporate all the features of Claim 1 by dependence, are also patentable over Saias, Defarlo, and Kane. Each of Claims 2-16 is further distinguished over Saias, Defarlo, and Kane for the additional subject matter they recite. Therefore, the rejections of Claims 2-16 should be withdrawn.

To the extent Saias was cited as a basis for rejecting the claims dependent on Claim 1, Saias does not teach or suggest "a rating for each of the two market participants . . . , wherein the rating for each market participant is descriptive of the market participant as a trading party." Accordingly, Saias does not support a rejection of Claims 2-16 inasmuch as they further recite elements pertaining to "the rating" recited in Claim 1.

### Claim 23

Claim 23 recites:

A computer system for facilitating trading that includes:  
a computer having a processing component configured to automatically capture data regarding a trade between two market participants that are each parties to the trade, wherein the trade results in an exchange of items between the two market participants, wherein one of the market participants is a buyer in the trade and the other of the market participants is a seller in the trade, and wherein the captured data includes data regarding the trade for both the buyer side and seller side of the trade;  
wherein the processing component is further configured to automatically determine from the captured data whether each of the two market participants, as a party to the trade, has gained money or lost money from the trade and to automatically update a rating for each of the two market participants based on the determination of whether money was gained or lost from the trade, wherein the rating for each of the market participants is descriptive of the market participant as a trading party and is based on the outcome of trading between the two market participants.

Applicant has considered the disclosures of Saias, Defarlo, and Kane and respectfully submits that the none of the cited references (considered alone or combined) teaches or suggests the system recited in Claim 23, particularly in view of the comments provided above relative to



Claim 1. For at least these reasons, absent a *prima facie* basis for rejecting Claim 23, the rejection of Claim 23 should be withdrawn.

#### Claims 24-36

Claims 24-36, which incorporate all the features of Claim 23 by dependence, are also patentable over Saias, Defarlo, and Kane. Furthermore, each of these dependent claims is patentably distinguished over Saias, Defarlo, and Kane for the additional subject matter they recite.

For example, to the extent Saias was cited as a basis for rejecting the claims dependent on Claim 23, Saias teaches or suggests nothing about "a rating for each of the two market participants . . . , wherein the rating for each of the market participants is descriptive of the market participant as a trading party." Accordingly, Saias does not support a rejection of Claims 24-36 inasmuch as they further recite elements pertaining to "the rating" recited in Claim 23. For at least these reasons, the rejections of Claims 24-36 should be withdrawn.

#### Claim 40

Claim 40 is dependent on Claim 37 and thus incorporates all of the elements of Claim 37, discussed below. For at least this reason, and for the additional subject matter it recites ("the executable instructions further cause the computer to determine whether the first or second market participant gained money or lost money from the trade and to provide said determination as information to the preference rating updating process"), the rejection of Claim 40 should be withdrawn.

#### Claims 43-48

Claim 43 is directed to a computer system for facilitating trading. The system includes "electronic means for capturing data regarding a trade between two market participants that are each parties to the trade, wherein one of the market participants engaged in the trade as a buyer and the other of the market participants engaged in the trade as a seller, wherein the trade results in an exchange of items between the two market participants, and wherein the captured data

includes data regarding the trade for both the buyer side and seller side of the trade" and "electronic means for determining from the captured data whether each of the two market participants has gained money or lost money from the trade in which they engaged."

The system in Claim 43 further includes "electronic means for updating a rating for each of the two market participants based on the determination of whether money was gained or lost from the trade in combination with data regarding other trades between the two market participants, wherein the rating for each of the market participants is descriptive of the market participant as a trading party."

For at least reasons similar to those discussed above with regard to Claim 1, applicant respectfully submits that Saias, Defarlo, and Kane do not teach or suggest a system as claimed in Claim 43. Accordingly, a *prima facie* basis for rejecting Claim 43 has not been established. The rejections of dependent Claims 44-48 should also be withdrawn, for at least their dependence on Claim 43 and for the additional features they recite.

Saias Does Not Support a *Prima Facie* Anticipation Rejection of Claims 17-22, 37-39, and 41-42

The Office Action (page 2) rejected Claims 17-22, 37-39, and 41-42 under 35 U.S.C. § 102(e) as being anticipated by Saias. Applicant respectfully submits that the claim rejections based on Saias are in error.

Claim 17

Claim 17 recites, in part, a computer-implemented method of "facilitating a trade between the first trading process and a second trading process by providing the second trading process with a rating for the first trading process, wherein the second trading process remains unaware of the identity of the first trading process and yet is able to obtain, from the market process, a rating for the first trading process, and wherein the rating is descriptive of the first trading process as a trading party." (Emphasis added.) Saias does not teach or suggest these claim elements. Indeed Saias teaches away from these elements.

To understand this point, as explained in applicant's prior responses, it is first necessary to recognize that the trading "preferences" of Saias describe what is being traded; the trading terms or "preferences" of Saias are not descriptive of a trading process as a trading party on the other side of the trade. Each of the parties can submit various terms to be negotiated in order to make a trade. The trading terms according to Saias are characteristics that describe the items to be traded (i.e., what is being traded), such as price and quantity; the trading terms are not "a rating for the first trading process," as claimed in Claim 17, "wherein the rating is descriptive of the first trading process as a trading party."

In response, on page 13 of the Office Action, the Examiner argued:

Further, contrary to the applicant's assertion that SAIAS terms are not directed to who is on the other side of the trade, the examiner asserts that SAIAS terms are directed to economic agents such as organizations and firms that engage in trade/exchange with one another. The applicant needs to understand that the party on the other side of the trade is either a buyer or a seller, and a party on one side of the trade is trading/exchanging with another party on the other side of the trade. So if this is true, SAIAS discloses economic agents that set preferences and based on these preferences the system reconcile compatible economic agents (i.e., buyers and sellers) - see SAIA above

The trading terms described by Saias are not communicated from one party to another, and furthermore the trading terms themselves (i.e., the trading "preferences") do not describe either party as a trading party. Instead, as noted above, the trading terms refer to price and quantity, for example, and thus describe the items to be traded. The economic agents of Saias may set the trading preferences (as they describe the items that they wish to trade), but the trading preferences do not constitute "a rating for the first trading process," as claimed in Claim 17, "wherein the rating is descriptive of the first trading process as a trading party."

Furthermore, according to Saias, the trading terms form multi-dimensional preference surfaces (see paragraph [0320]), which are not disclosed to the other party in the trade. In paragraph [0317] of Saias (cited in the Office Action at page 3 and again at page 12), Saias teaches "none of the surfaces will be available for inspection or analysis by any other market

participant, or any third party." This disclosure of Saias does not teach or suggest the subject matter claimed in Claim 17 - rather, it is quite the opposite. In Claim 17, the second trading process (as a market participant) *is* provided "with a rating for the first trading process."

In addition, Claim 17 recites "wherein the rating is based on a statistical analysis of the outcome of prior trades between the first and second trading processes." This feature is also not taught or suggested by Saias, or any of the other cited art.

Since Saias fails to teach or suggest all of the elements of Claim 17, applicant submits that Saias does not anticipate Claim 17. Saias thus does not support a *prima facie* rejection of Claim 17 under Section 102(e). The rejection of Claim 17 should be withdrawn.

#### Claim 18

Saias fails to teach or suggest all of the elements of Claim 18, including "a preference rating updating process," as claimed. Saias also does not teach or suggest "a software process being a first market participant" that decides "whether to trade with a second market participant based on a preference rating of the second market participant determined by the preference rating updating process, the preference rating being descriptive of the second market participant as a trading party," wherein "the trade results in an exchange of items between the market participants." As further recited in Claim 18, "the information provided to the preference rating updating process is derived from analyzing the outcome of prior trades between the first and second market participants."

With respect to Claim 18 (as well as Claim 17), the Office Action cited paragraphs [0310]-[0311] and paragraphs [0317]-[0318] of Saias, but these paragraphs teach nothing about a first market participant deciding whether to trade with a second market participant based on a preference rating of the second market participant. *In fact, Saias teaches the contrary.* The automated market (AM 108) taught by Saias receives trading terms from different parties and arranges trades while keeping information about the parties private. In the present application, the first market participant is given the preference rating (which is

"descriptive of the second market participant as a trading party") so that the first market participant can determine whether to trade with the second market participant based on the preference rating.

Furthermore, as with Claim 17, applicant notes that the preference rating in Claim 18 is descriptive of the market participant who is involved in a trade. On the other hand, at paragraph [0318] of Saia, Saia explains that the trading terms, or "preferences," are terms for negotiation and include price, quantity, and other characteristics based on *what* (i.e., the items) is being traded. According to Saia, trading terms or "preferences" obtained from one market participant are not shared with any other market participant. Simply put, the teachings of Saia are contrary to that which is taught and claimed in Claim 18. For at least the reasons discussed above, Claim 18 is patentably distinguished over Saia and the rejection of Claim 18 should be withdrawn.

#### Claims 19-22

Claims 19-22, which depend from Claim 18, incorporate all of the features of Claim 18. Accordingly, each of these dependent claims is patentably distinguished over Saia for at least the reasons discussed above. Claims 19-22 also present additional subject matter that defines the claims over Saia. For at least these reasons, the rejections of Claims 19-22 should be withdrawn.

#### Claim 37

Claim 37 recites a tangible computer-accessible medium having executable instructions stored thereon that, in response to execution by a computing device, cause the computing device to undertake actions similar to those described in Claim 18. These actions include "automatically provid[ing] information to a preference rating updating process" and "automatically decid[ing], as a first market participant, whether to trade with a second market participant based on a preference rating of the second market participant determined by the preference rating updating process, the preference rating being descriptive of the second market

participant as a trading party." The information provided to the preference rating updating process "is derived from analyzing the outcome of prior trades between the first and second market participants."

Applicant submits that Saias fails to teach or suggest a computer-accessible medium as recited in Claim 37, particularly in view of the comments provided above. For at least these reasons, applicant requests withdrawal of the rejection of Claim 37.

Claims 38, 39, 41, and 42

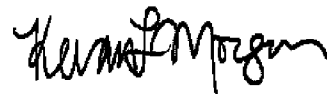
Claims 38, 39, 41, and 42 incorporate all the features of Claim 37 by dependence, and thus are also patentable over Saias. Moreover, each of these dependent claims is patentably distinguished over Saias for the additional subject matter they recite. The rejections of Claims 38, 39, 41, and 42 should thus be withdrawn.

CONCLUSION

Claims 1-48 are respectfully submitted to be in patentable condition. Allowance of the application at an early date is requested. Should any remaining issues need to be resolved, the Examiner is invited to directly contact the undersigned counsel to discuss these issues.

Respectfully submitted,

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